

Hereford Ins. Co. v ABV Med. Supplies Inc.

2024 NY Slip Op 32123(U)

June 24, 2024

Supreme Court, New York County

Docket Number: Index No. 155990/2022

Judge: Dakota D. Ramseur

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 34M

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HEREFORD INSURANCE COMPANY,

Plaintiff,

- v -

ABV MEDICAL SUPPLIES INC.,CITIMED COMPLETE
 MEDICAL CARE, PC,ERIC KENWORTHY, EU MEDICAL
 SUPPLIES, INC.,GM WELLNESS MEDICAL,
 PC,MACINTOSH MEDICAL PC,MARK H VINE, MW
 PSYCHOLOGY, PC,PHYSIO-ACTION PT, PC,SOORAJ
 POONAWALA, VAYNSHTEYN CHIROPRACTIC, PC,VVO
 SUPPLY INC.,WHITESTONE RX PHARMACY, INC.,JEAN
 H. R. ST-SURIN

Defendant.

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INDEX NO. 155990/2022

MOTION DATE 05/07/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
 MOTION**

HON. DAKOTA D. RAMSEUR:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 70

were read on this motion to/for JUDGMENT - DEFAULT.

Plaintiff, Hereford Insurance Company (hereinafter, “Hereford“), commenced this declaratory judgment action against Jean St-Surin and various medical providers over no-fault reimbursement claims arising from medical treatment she received after an alleged August 21, 2021 motor vehicle accident. In its complaint, Hereford alleges that its investigation into the accident revealed circumstance which raised a strong possibility, or “founded belief,” that St-Surin was not injured as alleged. Accordingly, plaintiff seeks a declaration that it does not owe a duty to pay for no-fault benefits arising out of the motor vehicle accident. In this motion sequence (003), it moves for a default judgement pursuant to CPLR 3215 against defendants Sooraj Poonawala M.D. and Jean H. R. St-Surin.¹ More specifically, Hereford seeks declarations that (1) St-Surin breached a condition precedent to coverage under her insurance policy by failing appear for examinations under oath on at least two occasions; and (2) St-Surin’s injuries and any alleged treatment submitted by Poonawala were not causally related to the subject motor vehicle accident. (*See* NYSCEF doc. no. 57, notice of motion, and doc. no. 70, proposed order.) The motion is unopposed. For the following reasons, plaintiff’s motion is granted.

¹ The Court previously granted default judgments against certain other medical providers and settled with the defendants who did appear. Poonawala and St-Surin are the only remaining defendants in this captioned case.

BACKGROUND

On August 21, 2021, St-Surin was allegedly involved in a motor vehicle accident at the intersection of 187th Street and Webster Avenue in Bronx, New York., while driving a Hereford-insured vehicle (the “insured vehicle”). (NYSCEF doc. no. 45 at ¶6, affidavit or affirmation in support of motion.) As a result, St-Surin suffered alleged significant bodily injuries and received treatment from the above-named medical providers. In addition to the magnitude of the no-fault claims that were submitted to Hereford by the medical providers, its investigation revealed that St-Surin signed two Motor Vehicle Accident Reports (MV-104s) that listed different home addresses for her and differing descriptions of her injuries (NYSCEF doc. no. 60, MV-104s), several of the medical providers seeking reimbursement had previously been subject to discipline and/or investigation, and St-Surin had previously claimed injuries on at least seven prior occasions. (NYSCEF doc. no. 58, affidavit Whiting.)

On October 28, 2021, Hereford sent letters via regular and certified mail to St-Surin scheduling her Examination Under Oath (“EUO”) for November 22, 2021. (NYSCEF doc. no. 62 at 1–8, EUO scheduling letters and bills.) St-Surin did not attend either this EUO or the EUO adjourned to December 16, 2022. (NYSCEF doc. no. 62, at 5–8; NYSCEF doc. no. 63 at 1–5, EUO transcript.) St-Surin then failed to appear at the final scheduled EUO on January 18, 2022. (NYSCEF doc. no. 62, at 9–12; NYSCEF doc. no. 63, at 6–10.)

In July and September of 2022, Plaintiff served the summons and complaint on all named defendants, including Poonawala and St-Surin. (NYSCEF doc. no. 8-19, affidavits of service; NYSCEF doc. no. 22, affirmation of service for individual defendants); NYSCEF doc. no. 53, affidavit of service.) Thereafter, on March 25, 2024, Hereford served Poonawala and St-Surin with notice of its motion for a default judgement. (NYSCEF doc. no. 54, notice of motion.)²

DISCUSSION

CPLR 3215(f) requires a movant seeking default judgment to submit the following proofs: (1) proof of service of the summons and complaint or summons with notice; (2) an affidavit of the facts constituting the claim; and (3) an affidavit showing the default in answering or appearing. Hereford has demonstrated that it both served the summons and compliant upon Poonawala and St-Surin and that they failed to answer.

As to the facts constituting Hereford’s claim, 11 NYCRR § 65-1.1 creates the legal framework for New York’s no-fault vehicle insurance system. It ensures prompt compensation for losses incurred by accident victims without regard to fault and/or negligence. (*See Fair Price Med. Supply Corp. v Travelers Indem. Co.*, 10 NY3d 556, 562 [2008].) This statute requires an accident victim to submit a notice of claim and proof of said claim within 45 days of the accident, at which point the insurance company must pay or deny the claim. (*Id.*, citing *Hospital*

² Hereford previously moved for, and the Court granted, default judgments against the other named medical providers. (NYSCEF doc. no. 42, Decision and Order dated 10/18/23.) It explained that its delay in moving for default against St-Surin and Poonawala was an oversight on its part by former counsel, who erroneously believed they had not been served with the complaint. Since Hereford has shown that it diligently prosecuted its case against the other named defendants, it has demonstrated sufficient cause as to why the complaint should not be dismissed.

for *Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 9 NY3d 312 [2007].) Should the insurance company seek to investigate the claim further, § 65-1.1 requires it to provide the accident victim with a request for an EUO within 15 days of receiving notice of the claim. (See 11 NYCRR § 65-1.1, “conditions”; *Unitrin Direct Ins. Co. v Beckles*, 188 A.D.3d 620 [1st Dept 2020].) The failure to appear for a properly noticed EUO constitutes a breach of a condition precedent of the insurance contract and vitiates insurance coverage altogether. (*Hertz Vehicles, LLC v Alluri*, 171 AD3d 432, 432 [1st Dept 2019].) Here, Hereford received notice of her claim on October 20, 2021, and notified her of a scheduled EUO within the required statutory 15-day timeframe on October 28, 2021 (NYSCEF doc. no. 31 at 13–15, *notice of EUO*). Hereford also provided proper notice of the December 16 and January 18 EUOs. (See NYSCEF doc. no. 62, at 5–8; NYSCEF doc. no. 63 at 1–5, EUO transcript.)

In addition, no-fault insurers like Hereford may disclaim coverage where there is a “founded belief that the alleged injury does not arise out of an insured incident.” (*Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199 [1997].) Hereford has demonstrated such a founded belief since: (1) St-Surin did not file a police report, (2) she signed MV-104s with different addresses and described different injuries; (3) several of the medical providers were previously investigated for filing false claims, and (4) she has filed at least seven previous claims for injuries. Accordingly, because Hereford is entitled to disclaim coverage based upon St-Surin’s failure to appear at two EUOs and the founded belief that the accident did not occur as she alleges in her notice of claim, Hereford is entitled to a default judgment against Poonawala and St-Surin. Plaintiffs have also made the requisite proof against the defaulting medical provider defendants. As assignees of rights owned by the individual defendants, these defendants stand in their shoes, i.e., they take the assignment of the individual defendants’ rights but do so subject to any assertable defenses. (See *Arena Constr. Co. v J. Sackaris & Sons, Inc.*, 282 AD2d 489, 489 [2d Dept 2001]; *Long Is. Radiology v Allstate Ins. Co.*, 36 AD3d 763, 765 [2d Dept 2007].) As these claims are colored by the individual defendants’ contradictory and misleading statements to plaintiffs, these defendants are likewise not entitled to receive any payments from plaintiffs for medical services provided as a result of the accident. (See *American Alternative Ins. Corp. v Washington*, 2018 NY Slip Op 51210[U] at 6-8 [Sup. Ct., NY County 2018].)

Lastly, plaintiffs have demonstrated that the above listed defendants defaulted. (See NYSCEF doc. no. 38.)

Accordingly, for the foregoing reasons, it is hereby

ORDERED that Hereford’s motion for default judgment pursuant to CPLR § 3215 (Motion Seq. 003) against defendants Jean St-Surin and Sooraj Poonawala is granted; and it is further


ORDERED, ADJUDGED, and DECLARED that defendant St Surin breached a condition precedent to coverage under the no-fault regulation 11 NYCRR §65-1.1 and the subject policy of insurance by failing to appear at an examination under oath on at least two occasions; and it is further

ORDERED, ADJUDGED, and DECLARED that defendant St-Surin’s alleged injuries and any subsequent No-Fault treatment submitted by Poonawala and St-Surin were not causally related to the August 21, 2021, alleged loss under Hereford claim number 94799, and/or did not arise from an insured event; and it is further

ORDERED, ADJUDGED, and DECLARED that Hereford, by reason of no coverage, is not required to pay any sums, monies, damages, awards and/or benefits to Sooraj Poonawala and Jean St-Surin including but not limited to Mandatory Personal Injury Protection (No-Fault), Additional Personal Injury Protection, Uninsured/Underinsured Motorist Coverage, and Supplemental Uninsured/Underinsured Motorist Coverage, any and all medical-payment claims; any and all property-damage claims; any and all bodily-injury-liability benefits, in connection with the alleged incident of August 21, 2021; and it is further

ORDERED that plaintiff shall serve a copy of this decision and order upon all parties, with notice of entry, within ten (10) days of entry.

This constitutes the decision and order of the Court.

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DAKOTA D. RAMSEUR, J.S.C.

6/24/2024
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: